

Application No. 09/248,057
February 10, 1999
Attorney Docket No. 1417G P390 (formerly 62492)

1. A programmable medical device:

Species A: an infusion pump;

Species B: a respirator;

Species C: a vital sign monitor;

Species D: an apnea monitor;

Species E: a blood analyzer.

2. A controller for a programmable medical device:

Species I: a remote control unit;

Species II: a touchscreen.

3. A remote controller for a programmable medical device (upon election of Species I):

Species Ia: a mouse;

Species Ib: a lightpen;

Species Ic: a keypad.

Traverse and Provisional Election

In response, the Applicants respectfully traverse the restriction requirement, and request that the requirement be withdrawn.

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Pursuant to M.P.E.P. § 803, a restriction requirement is proper only if: (1) the inventions are independent or distinct as claimed, and (2) there would be a serious burden on the Examiner if the restriction is not required. With respect to the first restriction, the Applicants acknowledge the Examiner's finding that the inventions claimed in Species A-E are patentably distinct from each other. However, Applicants respectfully submit that a search and examination of the claims covering Species A-E would not impose a serious burden on the Examiner.

Although each species in the Examiner's first restriction requirement pertains to patentably distinct inventions, the five species identified are all related to medical devices. Because all five species pertain to medical devices, the Applicants anticipate that substantially the same classes and subclasses would be searched for each species. Thus, there would not be a serious burden on the Examiner if the restriction is not required.

The Applicants respectfully traverse the Examiner's contentions with respect to the second and third restrictions. In the second restriction requirement, the Examiner requires the Applicant to elect a controller for a programmable medical device, wherein *the controller* comprises: Species I, a remote control unit, or Species II, a touchscreen. However, none of the claims define the controller as being a remote control unit or a touchscreen. Independent claim 21 claims a controller comprising, among other things, a selector. Therefore, the selector is an element of the controller. Claims 22-25 are dependent claims that further define *the selector* claimed in independent claim 21. These claims define *the selector* as comprising either of the mouse, light pen, keypad or apparatus

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responsive to touch inputs. Therefore, these claims do not claim particular species of *the controller*, but rather various embodiments of *the selector*. As such, the Applicants believe that the Examiner's second and third restriction requirements are not proper and should be withdrawn.

If the Examiner makes the restriction requirement final, Applicants provisionally elect to prosecute the claims of Species A for an infusion pump. As far as the Applicants understand the second and third restriction requirements, the Applicants further provisionally elect Species I for a remote control unit and Species Ic for a keypad. Thus, the Applicants provisionally elect claims 1, 3, 8-11, 13, 18-21, 24, 26-36. In that event, Applicants request that the remaining claims 2, 4-7, 12, 14-17, 22-23, and 25 be withdrawn without prejudice.

Respectfully submitted,

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